APPENDIX.

Excerpts from Brief of Ellen Emerson, Appellant,
Before United States Court of Appeals,
Fifth Circuit.

SPECIFICATIONS OF THE ERRORS RELIED UPON.

1. The District Court erred in finding that Emerson was a licensee aboard the boat at the time of the explosion and fire.

2. The District Court erred in failing to find that Emerson was an invitee aboard the boat at the time of the explosion and fire.

3. Even if Emerson was a licensee at the time of the explosion and fire, the District Court erred in failing to find that the boat owner owed a duty of ordinary and reasonable care toward Emerson.

4. Even if Emerson was a licensee at the time of the explosion and fire, the District Court erred in holding that the only duty owed to Emerson was not to injure him by gross and wanton negligence.

QUESTION INVOLVED.

When a Boat Owner (Through His Servant or Agent) Invited Another to Come Aboard a Boat on Navigable Waters of Florida, and After Coming Aboard, the Person Invited Was Killed, Because of an Explosion and Fire Occurring on the Boat While He Was Assisting in the Starting of the Boat's Engine, at the Request of the Owner, Did the Boat Owner Owe a Duty of Ordinary and Reasonable Care Toward the Deceased at the Time of the Explosion and Fire?

This question is raised by all of the Specifications of Errors.

ARGUMENT.

A. Introductory.

Because of the fact that this claimant's claim arises by virtue of the Florida Death by Wrongful Act Statute, section 768.01, Florida Statutes, and is simply sought to be enforced in a Court of Admiralty, the substantive rights of the parties are to be determined by the law of Florida. *Graham v. A. Lusi, Limited*, (5 Cir.) 206 F.2d 223; *The Tungus v. Skovgaard*, ... U.S. ....., 3 L. Ed. 2d 524.

The problem here really is to determine what law the courts of Florida would apply to the facts of this case if the case were presented in a state court as a suit for wrongful death. (Pages 7 through 9)

B. Licensees and Invitees under Florida Law.

In Florida, an owner of land or structures thereon owes a different standard of care to an invitee upon such prem-

ses than he does to a licensee upon such premises, as regards keeping the premises free from defects or conditions which would be harmful to a visitor. (Pages 7, 9)

C. **A Boat Owner Owes a Duty of Ordinary and Reasonable Care to Anyone Lawfully upon the Boat, Regardless of Whether Such Person Is a Licensee or an Invitee.** (Page 11)

D. **Even If It Be Assumed That the Florida Courts Would Make a Distinction Between the Duty or Standard of Care Owed to a Licensee Aboard a Boat, It Is Clear That Emerson Was an Invitee on the Boat at the Time of the Explosion and Fire.** (Page 15)

E. **Even If It Be Assumed That Emerson Was a Licensee at the Time of the Explosion, and If It Be Assumed That Florida Would Make a Distinction Between Duties Owed to a Licensee and to an Invitee Aboard a Boat, Holloway Owed a Duty of Ordinary and Reasonable Care to Emerson Not to Injure Him by an Affirmative Act of Negligence.**